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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 506

GULF, MOBILE AND OHIO RAILROAD COMPANY,
Petitioner

versus

ILLINOIS CENTRAL RAILROAD COMPANY,
Respondent

REPLY BRIEF FOR PETITIONER

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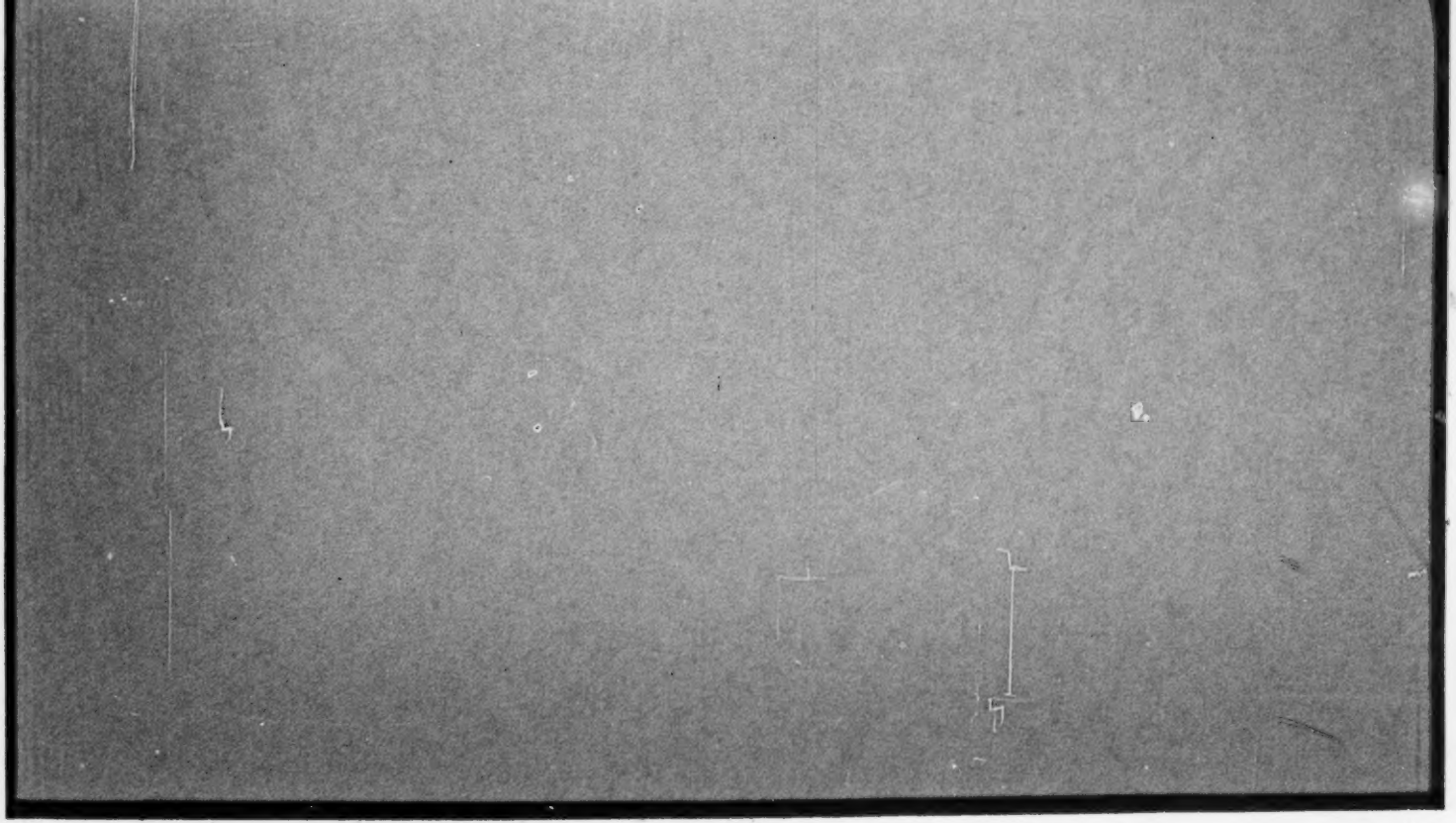

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We address this Reply Brief to the single proposition which demonstrates the invalidity of the positions taken in Respondent's Brief. That proposition is as follows:

> The Commission's Disclaimer of Jurisdiction of Petitioner's Rental Obligation Under the 1906 Contract Was Not a "Denial By the Commission of . . . Relief" From the Contractual Obligation. (Respondent's Brief, p. 5) [1]

I.C.'s position during the proceedings before Commission was that the Commission had no power to determine whether or not GM&O would continue liable to pay rent to I.C. under the contract. While GM&O urged the Commission to make that determination, the Commission accepted I.C.'s contentions, and held that it was the province

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[1]Hereinafter Petitioner is referred to as GM&O and Respondent as I.C.

of the courts, not of the Commission, to determine the effect of its orders upon contractural obligations of any kind. (R. 87-96; 282 I.C.C. at pp. 331-335)

GM&O acquiesced in that ruling.

It is necessarily implied in paragraph (18) of Section 1 that a certificate of public convenience and necessity is all that is required of the Commission to effect the congressional purpose to eliminate the waste of trackage operations that no longer serve any public need. But Congress did not leave it to implication. In paragraph (20) of Section 1 it was provided:

> "From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby."[2]

Section 1 (18)-(20) presupposes the undeniable fact that the cost of an operation that no longer serves any public need is a waste of money, hurtful both to the railroad and the public. The congressional purpose is to eliminate the waste.

Since I.C. was an interstate railroad, the Commission was required to determine the effect, if any, of the loss of rent upon its ability to serve the public. But I.C. did not claim and introduced no evidence that its ability to serve the public would be in anywise affected. The Commission's major finding No. 8 is a conclusive determination that the "injury" to I.C. would be "outweighed" by the resulting "benefit to . . . [GM&O] and the public."

In the subsequent court proceedings, I.C. claimed that it was of no interest to the public whether GM&O retained or paid to I.C. the stipulated rent after the authorized

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[2]See Appendix D, p. 52 of Petition.

abandonment, and that the private obligation was paramount to the public duty. The courts below adopted that conclusion, from which it would follow that Congress and the Commission had no constitutional power to deprive it of its rental income.

As to the power of Congress under the commerce clause of the Constitution over previously made contracts that come to conflict with the public duties of railroad, we adopt as our brief what this Court said in *Norman* v. *Baltimore & Ohio R. Co.,* 294 U.S. 240, at p. 302, and at pp. 307-310, and the cases cited therein, particularly *Louisville & N. R. Co.* v. *Mottley,* 219 U.S. 467. In *Transit Commission* v. *United States,* 289 U.S. 121, at 127, and *Thompson, Trustee* v. *Texas Mexican Ry. Co.,* 328 U.S. 134, at 148, this Court held in vigorous language that the public does have an interest in rental obligations under trackage contracts of one interstate railroad to another, within the jurisdiction of the Commission to regulate. It is the exclusive function of Congress and its administrative agencies, not to be usurped by the courts, to determine the need for regulation of such obligations. *American Communications Association* v. *Douds,* 339 U.S. 382, at 400, 401.

In view of the congressional intent that the Commission's certificates of public convenience and necessity should have the effect of relieving railroads and the public of the cost of operations that serve no public need, if the Commission intended that rents should continue to be paid after abandonment of trackage operations, it would be necessary to make it a condition of the authorization of abandonment. There was no such condition. To the exact contrary, the Commission found that continued operation, the cost of it, would impose an unnecessary and undue burden on GM&O *and* interstate commerce—both in the same phrase. And "major finding" No. 8, ignored by both courts below, is conclusive:

> "That on the whole the benefit to the applicant and the public from the proposal will outweigh *any* injury which *may* be inflicted thereby on the protesting railroads."[3]

The jurisdiction of the Court in this collateral proceeding was limited to a declaration of the effect of the certificate upon GM&O's obligations under the 1906 Contract, including the rental obligation; and that must be determined by the purpose of Section 1 (18) -(20) as construed by this Court to save to the public and to GM&O the cost of an operation that would be of no benefit to either.

The Commission's "major finding" and the finding of an unnecessary and undue burden upon interstate commerce, were beyond attack or question in any court since I.C. elected not to invoke the only remedy it had, an appeal to the full Commission under Section 17 (9) of the Act and, failing there, to a three-judge district court. *Rochester Telephone Corp.* v. *United States,* 307 U.S. 125 at 139, 140; *Holmes* v. *United States,* 89 F. Supp. 894 at 897, affirmed per curiam, 339 U.S. 927, rehearing denied, 339 U.S. 954.

The order and certificate were the administrative equivalent of a final judgment of a court. The one-judge district court below had no jurisdiction to review the facts found and conclusions reached by the Commission upon which the certificate was based. But, having assumed a jurisdiction vested exclusively in the three-judge district courts, the courts below erred again when they ignored, without mention, "major finding" No. 8 and misconstrued the Commission's disclaimer of jurisdiction to determine the effect of its Order and Certificate on rent and taxes. See Judge Rives dissent, 225 F. 2d 827-828; R. 477-479[4]; and *Southern Ry. Co.* v. *State of Georgia,* 4 S.E. 2d 233, 188 Ga. 1, denying the contention that the Commission's dis-

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[3]R. 102; 282 I.C.C. 340.

[4]See Appendix A, pp. 44-46 of Petition.

claimer of jurisdiction of a contractual obligation should "be construed to place a qualification or limitation upon an unambiguous certificate granted by it."

A dismissal of a petition or a prayer for relief of any kind for want of jurisdiction determines nothing but that jurisdiction is lacking. The merits of the claim for relief are untouched; and in the instant case the Commission's intention to leave the question to determination by courts of competent jurisdiction in any litigation that might subsequently arise was reflected in what it said regarding the two cases (*Western Pacific R. Co.* v. *Nevada-California-Oregon Ry.*[5] and *Meacham* v. *Louisville & N. R. Co.*[6]) in which it was held that a certificate of abandonment relieved the railroad of its contractual obligations:

> "However, in neither of these cases did we attempt to determine any private or contractual right or to relieve the carriers involved of any financial obligations under their contracts. Such matters were left to the courts *who exercised their jurisdiction in the premises and found that our certificates in those particular circumstances were a defense to the enforcement by them of the contracts presented.* There was no intimation from the courts that we should have by order declared the legal effect of our certificate on existing contracts of the applicant carriers."[7]

But the Commission does not permit its lack of jurisdiction of contractual obligations to interfere with its duty to determine questions of fact and reach conclusions in determining what is and what is not in the public interest.

In *International-G.N.R. Co. Abandonment,* 202 I.C.C. 91, 96, the Commission said:

> "Carrier obligations under charter or contract are matters which we cannot undertake to decide and which cannot, in any event, operate to restrict our

[5] (N.D. Calif., 1930), 40 F. 2d 731.
[6] (1943), 293 Ky. 642; 169 S.W. 2d 830.
[7] R. 90; 282 I.C.C. 333.

jurisdiction under the act to consider and determine questions of public convenience and necessity."

To the same effect is *Texarkana & F. S. Ry Co., et al., Abandonment,* 249 I.C.C. 563, 566, involving abandonment of operation under a trackage contract.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this date delivered three copies of the foregoing Reply Brief for Petitioner to Honorable D. K. McKamy, Attorney for Respondent.

This 5th day of December, 1955.

B. A. MONAGHAN